STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SBC Communications Inc.,	)	
SBC Delaware Inc.,	)	
Ameritech Corporation,	)	
Illinois Bell Telephone Company d/b/a	)	
Ameritech Illinois, and Ameritech Illinois	)	
Metro, Inc.	)	
	)	Docket No. 98-0555
Joint Application for Approval of the	)	
Reorganization of Illinois Bell Telephone	)	
Company d/b/a Ameritech Illinois, and	)	
the Reorganization of Ameritech Illinois	)	
Metro, Inc. in Accordance with Section	)	
7-204 of the Public Utilities Act and for	)	
All Other Appropriate Relief	)	

BRIEF ON REOPENING OF MCI WORLDCOM, INC.

Darrell S. Townsley
MCI WORLDCOM, Inc.
205 North Michigan Avenue
Suite 3700
Chicago, Illinois 60601
(312) 470-3395

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STATE OF ILLINOIS
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SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois, and Ameritech Illinois Metro, Inc.	)	
Joint Application for Approval of the Reorganization of Illinois Bell Telephone Company d/b/a Ameritech Illinois, and the Reorganization of Ameritech Illinois Metro, Inc. in Accordance with Section 7-204 of the Public Utilities Act and for All Other Appropriate Relief	)	Docket No. 98-0555

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Pursuant to Section 200.800 of the rules of practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Admin. Code Section 200.800, and the briefing schedule established in the above-captioned proceeding, MCI WORLDCOM, Inc. ("MCI WorldCom") hereby respectfully submits this Brief on Reopening.

I. INTRODUCTION

Prior to the filing of their Amended Application and the reopening of this proceeding, MCI WorldCom filed briefs demonstrating that the original Application of SBC Communications Inc., SBC Delaware Inc. (collectively "SBC"), Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois and Ameritech Illinois Metro, Inc. (collectively "Ameritech") for approval of their proposed could not be approved pursuant to Illinois law based on the record evidence as it existed at that time. MCI WorldCom argued then that under Sections 7-102 and 7-204 of the Illinois Public Utilities Act ("IPUA")Ameritech and SBC (collecively "Joint Applicants") were obligated to sustain the burden of demonstrating that, *inter alia*, the

acquisition of Ameritech by SBC is not likely have a significant adverse effect competition in Illinois and that the proposed merger will serve the public convenience. Based on the record prior to reopening, MCI WorldCom demonstrated that the Joint Applicants had failed to sustain their burden and the Commission therefore was obligated to reject the proposed merger.

After the initial round of testimony, cross examination, briefs and oral arguments in this matter, the Commission's deliberations revealed, consistent with positions taken by MCI WorldCom, that the record on certain issues -- including the merger's likely impact on local competition -- was not sufficiently clear to enable the Commission to make the statutory findings that it is required to make before it can approve a reorganization pursuant to Illinois law. As a result of concerns expressed by various Commissioners about the insufficiency of the record, on June 10, 1999, the Joint Applicants filed a Motion for Leave to File an Amended Joint Application, Motion to Reopen the Record, and Motion to Set an Expedited Schedule. The Motions to File the Amended Application and to Reopen the Record were granted and a schedule was subsequently set for further testimony, hearings and briefs.

In letters from the Chairman of the Commission to the presiding Hearing Examiners dated June 4, June 15 and July 9, 1999, specific questions were posed regarding the merger's likely impact on local competition, potential conditions that might be placed on the merger to protect consumers and allow for timely local competition, and certain commitments that the Joint Applicants made in their Amended Application. The purpose of the questions was to elicit from the parties to the proceeding during the reopening phase focused, detail-oriented information regarding specific conditions that would address, among other things, concerns about protecting consumers and ensuring implementation of timely local competition in the local exchange market -- conditions which would allow the Commission to make the statutory findings that it is obligated to make under Illinois law.

On reopening, the Joint Applicants, Staff and intervenors filed testimony on the issues of local market competition, merger costs and savings allocations and potential conditions. The question the Commission is faced with at this juncture is whether the newly supplemented record

is sufficient to demonstrate that proposed merger is not likely to have a significant adverse effect on competition in the local market in Illinois and whether the merger would otherwise serve the public interest. As discussed below, if the Commission is inclined to conditionally approve the merger based on the reopened record, it should only do so if it requires specific conditions to be satisfied prior to the closing of the merger. Without specific conditions which must be met prior to the merger closing, the Commission simply cannot make the requisite finding that the merger is not likely be a significant adverse effect on competition in the local exchange market in Illinois or that the merger will otherwise serve the public interest.

II. THE COMMISSION SHOULD REQUIRE THAT CONDITIONS BE SATISFIED PRIOR TO THE CONSUMMATION OF THE MERGER

Summary of MCI WorldCom Recommendation: The Commission should require that the Joint Applicants satisfy detailed and specific conditions prior to the merger.

In essence, the position of the Joint Applicants is that paper promises to implement vague commitments at some point in the future should be enough to satisfy the requirements of Illinois law. The fundamental problem with the "merge now, comply later" strategy is that cannot ensure that the prospects for local competition will be enhanced. Because the proposed merger would inflict serious harm to local competition without any offsetting public interest benefits, the entire justification for merger approval depends on the effectiveness and success of the conditions. Behavioral conditions such as those proposed by the Joint Applicants simply cannot carry the weight that is needed to demonstrate compliance with Illinois law.

The merger would threaten the major public policy objectives of the Telecommunications Act of 1996 and of the Illinois General Assembly — maximum and rapid development of competition in the local exchange markets that Ameritech and other incumbent local exchange carriers still monopolize.[1] The effects, if not the intent, of the proposed merger would be to raise

[1]See, e.g., 220 ILCS 5/13-102(g) (finding of the General Assembly that "protection of the public interest requires changes in the regulation of telecommunications carriers and services to ensure,

the barriers to local competition within Ameritech's and SBC's regions, to reduce the ability of regulators and competitors to benchmark the performance of Ameritech and SBC, and to eliminate both potential and nascent actual competition between two companies.

A finding that the proposed merger would advance the public interest requires at a minimum that any conditions which may be imposed by the Commission generate public interest benefits that the Commission is confident will be major enough to outweigh the substantial harms that the merger will produce. The merger should not be approved unless substantial, effective, and enforceable conditions prevent any reduction in the growth of competition. The Illinois-specific commitments as well as the commitments proposed by SBC and Ameritech at the Federal Communications Commission ("FCC") do not come close to meeting this test. Indeed, they do not satisfy the standard that SBC and Ameritech committed to meet when they proposed the conditions: that comprehensive conditions "will bring immediate and substantial benefits to the public" and that they are "self-executing."[2] The Joint Applicants proposed Illinois-specific and FCC commitments are largely meaningless because they do not require SBC and Ameritech to do enough to open their local markets to competition, and because they are not enforceable as a practical matter because, among other reasons, they do not require the Joint Applicants to satisfy conditions before they complete the merger.

It is paramount that all of the conditions be met up-front and that the Joint Applicants be required to prove to the Commission's satisfaction that they have met all of the conditions before they are allowed to complete their merger in Illinois. Their proposed commitments rely exclusively on behavioral (versus structural) conditions that seek to constrain anticompetitive conduct through specific requirements or prohibitions on SBC and Ameritech's conduct and with which SBC and Ameritech have strong incentives not to comply. Pre-conditions are superior,

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to the maximum feasible extent, the reasonable and timely development of effective competition in all telecommunications service markets.")

[2]See SBC-Ameritech Ex. 1.5 (Kahan Rebuttal on Reopening), Schedule1 (FCC Exparte filing), pp. 1-2.

both because they provide a substantial incentive for compliance, and because it is easier to determine whether the Joint Applicants have in fact complied with conditions than to force compliance if they do not achieve it on their own. The Joint Applicants' insistence that their proposed merger is critical to their very survival suggests that they will have a strong incentive to comply with conditions that must be satisfied before the merger occurs. That incentive will, by definition, be lost after the closing.

Pre-conditions are not a panacea because some post-closing oversight is needed to prevent any back-sliding. However, it will be substantially easier for the Commission to enforce conditions requiring the Joint Applicants to continue levels of performance they have already demonstrated they can meet (including through use of self-executing remedies) than to enforce conditions requiring the Joint Applicants to cooperate on a timely basis with their competitors in the design and development of complex systems or the formulation of cost-based prices.

In sum, allowing the Joint Applicants to merge first and comply later is a recipe for defiance and delay. It would not only prevent achievement of the purpose of the conditions — generating local competition that would otherwise be prevented by the merger — but impose even greater burdens on the Commission to police and enforce conditions that the merged entity will have compelling incentives to frustrate and evade. Indeed, the Commission might reasonably ask why the Joint Applicants would agree to conditions if they actually expected that their version of implementation would substantially increase the effectiveness of competition against them in their monopoly local markets.

For all of these reasons, the Commission should require that specific conditions be satisfied prior to allowing the merger to close. SBC and Ameritech should be directed to demonstrate compliance with each condition that is imposed as soon as practicable and interested parties should be allowed to comment on claimed compliance in an expeditious manner so that the Commission can make a finding of compliance before the parties are authorized to consummate the merger. The Commission should also require the Joint Applicants demonstrate continuing compliance with each of the conditions imposed by the Commission via periodic reports which

should be subject to public notice and comment over short time frames. The conditions should apply to SBC and Ameritech and any ILEC owned or controlled by SBC or Ameritech, including affiliates providing data services. Finally, the Commission should not set a specific "sunset" date for the conditions that it imposes. Rather, the Commission should commit to review the continuing need for these conditions no earlier than three years after the merger is consummated. Given that the conditions will be of critical importance to the timely development of local exchange competition in Illinois, the Commission should also determine that Ameritech Illinois will have the burden of proving after three years that specific, individual conditions are no longer useful.

III. JOINT APPLICANTS ILLINOIS-SPECIFIC AND FCC COMMITMENTS ARE NON-STARTERS AND WILL DO LITTLE OR NOTHING TO BRING CHOICE TO RESIDENTIAL AND SMALL BUSINESS CUSTOMERS IN ILLINOIS

Summary of MCI WorldCom Recommendation: The Commission should find that the Illinois-specific and FCC commitments made by Ameritech and SBC are wholly inadequate to and do not demonstrate that the merger will not likely have a significant adverse effect of competition in the local exchange market in Illinois. In addition, the Commission should reject out of hand exceptions to interconnection commitments that would prohibit Competitive Local Exchange Carriers ("CLECs") from adopting in whole or in part agreements which were arbitrated in other states.

On reopening, the Joint Applicants, Staff and intervenors filed testimony on the issues of local market competition, merger costs and savings allocations and potential conditions. With respect to the local competition issues, the Commission has before it a potpourri of commitments and proposed conditions. The Joint Applicants submitted what they refer to as "additional commitments" regarding, among other things, Illinois-specific interconnection, shared transport, Operational Support Systems ("OSS"), performance measuring benchmarks and compliance.[3]

[3]See Amended Joint Application, Exhibits 5 and 6.

The Joint Applicants also entered into the record commitments that they have made to the FCC in connection with their application to the FCC for approval of the proposed merger. In addition, the record contains details regarding commitments that SBC voluntarily negotiated with the Staff of the Public Utility Commission of Texas and CLECs to open the local exchange market to competition in SBC's service territory in Texas.[4] In contrast to the "commitments" proposed by the Joint Applicants, intervenors have suggested a wide variety of proposed conditions.

The question that the Commission faces at this juncture is whether the newly supplemented record is sufficient to demonstrate that proposed merger is not likely to have a significant adverse effect on competition in the local market in Illinois. Clearly, the answer to that question is no if the Commission only looks to the so-called voluntary commitments that the Joint Applicants have made in Illinois and at the FCC. Before the Commission could answer that question in the affirmative, it would have to order that specific conditions be satisfied prior to the merger closing. Without imposing requirements, such as those discussed in section IV of this brief, MCI WorldCom submits that the Commission cannot make the requisite finding that the merger is not likely be a significant adverse effect on competition in the local exchange market in Illinois.

Various commitments made by the Joint Applicants with respect to availability of unbundled network element ("UNE") combinations, including the UNE platform, and Operational Support Systems ("OSS") give rise to serious concerns about the Joint Applicants' attitudes toward opening the local market competition. Despite unrebutted CLEC testimony about the importance of these issues to local competition in residential and small business markets, the Joint Applicants provide little assurance that these critical items will be available in a timely manner or in any meaningful way. The Joint Applicants' Illinois-specific commitments as well as their commitments to the FCC fail to demonstrate by a preponderance of the evidence that the merger

[4]See Cross Exhibit A (Texas Memorandum of Understanding, to Project No. 16251, Public Utility Commission of Texas, submitted April 26, 1999), entered into the record July 13, 1999.

will not likely have a significant adverse effect on competition in the local exchange market in Illinois.

For instance, there is no Illinois commitment that Joint Applicants will provide UNE combinations, including the UNE platform. Conversely, the FCC commitments do contain some provision for the offering of UNE combinations, including the platform, but those commitments restrict to 302,000 the of residential lines in Illinois that can be served using UNE combinations and resale.[5] By contrast, SBC in Texas has committed to provide combinations of UNEs at TELRIC prices for business customers for 2 years and for residential customers for three years.[6] And, significantly, the time line for provision of the combinations of UNEs in Texas appears to occur directly following or in close proximity to the successful completion of third part testing of SBC's OSSs.[7] In addition, whatever the value there is in the Joint Applicants' so-called interconnection commitments is eviscerated by the exceptions to the commitments.[8]

Particularly troubling is the Joint Applicants' refusal to allow CLECs to request and receive without having to go to arbitration provisions of interconnection agreements that SBC (or for that matter other Ameritech operating companies) has arbitrated with carriers in other states. The Commission should consider the benefits of allowing wholesale adoption of various arbitrated agreements or individual provisions of arbitrated agreements from other states that CLECs find desirable since such provisions can be viewed as representing "best practices" that may help ensure timely and effective competition reaches the local market in Illinois. Allowing the importation of such provisions without requiring arbitration does not, as Joint Applicants appear to believe, require this Commission to abrogate its authority to other state commissions.

In addition, the Commission should be concerned about the viability of the OSS

[5]See SBC-Ameritech Ex. 1.5 (Kahan Rebuttal on Reopening), Schedule 3, p. 28-29.

[6]See Cross Ex. A (Texas Memorandum of Understanding), pp. 26-27.

[7]See Cross Ex. A (Texas Memorandum of Understanding), pp. 2, 4, 39-40.

[8]SBC-Ameritech Ex. 1.3 (Kahan Direct on Reopening), pp. 6-15; Tr., pp. 1856-1862.

commitments made by the Joint Applicants and what they mean for local competition in Illinois. It is uncontested that OSS is critical to the ability of CLECs to provide service in any meaningful way to residential and small business customers at commercial volumes. Yet the Joint Applicants' Illinois commitment on OSS would mean that OSSs capable of supporting preordering, ordering, repair and maintenance of UNEs and UNE combinations, including the UNE platform, would take a minimum of two years to implement. Since it would take a minimum of two years to build OSS that could support UNE platform, and the Joint Applicants commitments to the FCC to provide some form of UNE combinations is limited in terms of the number of lines for which it can be utilized and lasts only three years, CLECs would be investing time and money in building OSSs that may be useful for a year or less. Indeed it is entirely possible that the OSSs may not be in place before any commitment to provide combinations of UNEs expires.[9] The Joint Applicants' FCC commitments provide a similar OSS roll out period. Thus, even if we require the Joint Applicants to immediately begin providing combinations of UNEs, including UNE platform, CLECs will not be able to sell services on a mass market basis to residential and small business customers for at least two years. That is tantamount to imposing a two year moratorium on residential and small business competition in Illinois and is constitutes an significantly adverse and unacceptable effect on the development of local competition in Illinois.

Based on the record on reopening, it is clear that there are significant differences between what the Joint Applicants have committed to in Illinois, at the FCC and what SBC has agreed to in Texas. It is also clear that the Joint Applicants will not agree to adopt in Illinois conditions, either in whole or in part, that SBC has agreed to adopt to open the local exchange market in Texas. The Joint Applicants appear resolute in their position that this Commission should not allow in Illinois the adoption of agreements to which SBC is a party that have been arbitrated in other states, or adoption of provisions from such arbitrated agreements. The Joint Applicants base their objection on the theory that the Commission would be abrogating its authority if it

[9]Tr., pp. 1957-1958.

allowed the adoption of agreements and provisions of agreements arbitrated by other state commissions.[10] The Commission should not be swayed by this self-serving claim.

As an initial matter, the Commission should ask why customers in Illinois deserve anything less than what SBC has agreed to do in Texas? The answer, of course, is that residential and small business customers in Illinois do not deserve anything less than the best of what SBC offers or is required to offer elsewhere. There is no reason why Illinois residents should not benefit from best available market opening initiatives, whether they come from an arbitrated agreement from another state or terms and conditions that SBC has agreed to provide, including individual provisions of the Proposed Interconnection Agreement ("PIA") from Texas. Given that this Commission has been working to open Illinois's local markets to competition since before the passage of the Telecommunications Act of 1996, it is unthinkable that an additional two year delay in opening the local market would be tolerable. The time has come for more stringent market opening initiatives than we have taken in the past. Accordingly, the Commission should reject the Joint Applicants' proposal that CLECs not be allowed to adopt, in whole or in part, provisions from agreements to which SBC is a party which happen to have been arbitrated in another state.[11] In addition to striking this self-serving "exclusion" from its commitments, the Commission should adopt specific, detailed pre-conditions discussed below before it will allow the merger to close.

IV. PRE-CONDITIONS AND REQUIREMENTS THAT SHOULD BE IMPOSED

Summary of MCI WorldCom Recommendation: The Commission should require Ameritech

[10]SBC-Ameritech Ex. 1.3 (Kahan Direct on Reopening), pp. 6-7, 12-13; SBC-Ameritech Ex. 10.1 (Dysart Supp. Direct on Reopening), pp. 2-3.

[11]For that matter, the Commission should not restrict the ability to import arbitrated agreements to which SBC is a party; it should also allow CLECs to adopt in whole or in part arbitrated agreements between other Ameritech operating subsidiaries (such as Ameritech Michigan) and other telecommunications carriers.

Illinois to satisfy specific conditions and demonstrate such compliance to the Commission before the merger can close. Among the specific pre-conditions that should be imposed are immediate and on-going provisioning of shared transport and unrestricted UNE platform by Ameritech Illinois, regardless of what the FCC concludes in its Rule 319 remand proceeding. Ameritech should be required to immediately begin processing of CLEC requests to transition existing resale customers to the UNE platform at TELRIC prices and be prohibited from charging anything for accepting and processing those requests. Ameritech should be required to immediately make available on an unbundled basis, singly or in combination, the following unbundled network elements: local loops, the network interface device, switching, dedicated and shared transport, signaling systems, operations support systems, operator and directory assistance databases, dark fiber, xDSL equipped loops, subloop unbundling, Extended Link Service ("ELS") and Enhanced ELS. These UNEs will continue to be made available regardless of the FCC's findings in its Rule 319 Remand Proceeding. Also, the Commission should require immediate development and implementation of New York style third party test and carrier-to-carrier testing of OSSs, engage KMPG as the third party tester, and require the Joint Applicants to fund the third party testing. Until the "permanent" rates are set for UNE non-recurring charges and shared transport, the Commission should require Ameritech Illinois to reduce by 50% all stand alone non-recurring charges for individual UNEs that Ameritech had proposed in the original TELRIC, provide shard transport at the interim rate set by the Commission, and prohibit any "glue charges" for combinations of elements, including platform, that exist in the exist in the network today. Finally, the Commission should require substantial and self-executing penalties are needed to ensure that Joint Applicants cannot backslide on maintaining compliance with our preconditions and other requirements.

If the Commission is serious about wanting to provide residential and small business customers a choice for their local service in a timely and effective manner, it must ensure that a host of important pre-conditions and requirements be satisfied. Absent the imposition of stringent conditions that must be met before the merger is allowed to close, the Commission is left with

nothing more than vague paper promises that provide a recipe for defiance and delay by the Joint Applicants. If the Commission is inclined to conditionally approve the merger, it must adopt conditions, including those discussed below, which are substantial, effective and enforceable, and which must be met prior to the consummation of the merger.

1. Availability of UNE Combinations, Including Unrestricted UNE Platform

The Joint Applicants were understandably silent in addressing the lack of UNE platform in Illinois. That is because UNE platform, along with appropriately tested uniform OSS capable of supporting it, is essential to the ability of CLECs to be able to provide competitive local services to residential and small business customers on a mass market basis.

In stark contrast to the Joint Applicants refusal to address the issue, MCI WorldCom hammered home the point that the availability of combinations of UNEs, including unrestricted UNE platform, is essential to providing choice for residential and small business customers in Illinois. MCI WorldCom witness Sherry Lichtenberg submitted focused and detailed information about MCI WorldCom's experiences in New York where the Company has rolled-out competitive local service utilizing UNE platform and Bell Atlantic New York's OSSs, which have been and continue to be the subject of vigorous, independent third party and carrier-to-carrier testing. As Ms. Lichtenberg observed, in the short time that UNE platform and OSS that supports it has been available in New York, MCI WorldCom has sold in excess of 100,000 residential access lines state-wide.[12] Ms. Lichtenberg elaborated on the reasons that UNE platform is essential to the ability of CLECs to be able to provide local services to residential and small business customers on a mass market basis for the foreseeable future, and explained why the self-provisioning of network elements and use of UNEs on a stand alone basis do not allow for mass market roll-out of local services at this point in time.[13]

The unrebutted testimony of MCI WorldCom witness Lichtenberg makes clear that UNE

[12]MCI WorldCom Ex. 3.0 (Lichtenberg Rebuttal on Reopening), pp. 13-14.

[13]*Id.*, pp. 10-20.

platform must be provided by Ameritech now if the Commission expects any CLECs to seriously consider entering the local market on a mass market basis in the near term. Part and parcel of the ability to utilize UNE platform for rapid market entry is the need for certainty with respect to pricing of UNE platform, including any non-recurring charges that might be associated with it and a clear understanding of when and how such charges apply. In their Amended Application and testimony, Ameritech and SBC have ignored questions from the Commissioners about the status of the provisioning of UNE platform. With a gaping hole as to why UNE platform is not being provided, or when and how it will be provided by a combined Ameritech and SBC, the Commission is compelled to find that there will be a substantial adverse impact on local competition because of Ameritech's and SBC's refusal to provide UNE platform.

However, if the Commission is inclined to approve the proposed merger, it should only do so if it conditions approval on, among other things, a requirement that Ameritech and SBC provide UNE platform without restrictions. In addition, the Commission should require Ameritech to allow CLECs to immediately begin transitioning existing resale customers to UNE platform prior to consummation of the merger. Successful transition of resale customers to UNE platform and general availability prior to approval of the merger would provide the Commission with some measure of the willingness and ability of Ameritech to provide UNE platform. If the Commission expects CLECs to start providing services to residential and small business markets sooner rather than later, it needs to take decisive steps now so that CLECs who want to begin selling service to these markets can do so with the knowledge that they will have the tools necessary to do so. Ordering Ameritech to provide UNE platform now is one of those steps.

2. Third Party and Carrier-to-Carrier Testing of OSS

Another essential milestone necessary to ensure that residential and small business customers in Illinois will have a choice of local exchange carriers in the availability of appropriately developed, tested and implemented OSS that will support preordering, ordering, provisioning, repair and maintenance and billing for, among other things, combinations of UNEs, including the UNE platform. Predictably, Joint Applicants claim that independent third party and

carrier-to-carrier testing of OSS is not necessary. Instead, the Joint Applicants would rather have the Commission rely on negotiations and their good faith efforts to implement OSS within two years. While the Joint Applicants position on OSS was not surprising, the position taken by Staff was very surprising. Staff's newly formed position on OSS appears to be that third party testing may not be necessary or appropriate for SBC and Ameritech in Illinois. Both the Joint Applicants' and Staff's positions are wrong and should be rejected.

Staff witness McClerren testified with respect to Staff's position regarding third-party testing of Ameritech's OSS systems. Mr. McClerren opined that "[g]iven the magnitude of the OSS issue, the Commission should not abrogate its decision making responsibility to any other entity." by retaining a third-party to test Ameritech's OSS systems. Staff Ex. 8.02, p. 12. During re-direct, Mr. McClerren also opined that third-party testing is lengthy, would take place late in the process of developing Ameritech 's OSS systems, and would only give the Commission a snapshot view of Ameritech's OSS systems. Tr. pp. 2616-17.

Nevertheless, Mr. McClerren did admit on cross-examination that in his view, for example, Bell Atlantic's OSS have "undergone much more regulatory scrutiny than the systems of GTE." Tr. 2593-94. Mr. McClerren admitted that this was due not only to the fact that Bell Atlantic's systems are undergoing third-party testing. Tr. 2594. Mr. McClerren also stated it was due to the fact that the New York Commission "has been more active with Bell Atlantic's ... acquisition of NYNEX." Id.

a. The Magnitude of the Issue

On the issue of whether the Commission should engage consultants to investigate an issue of the magnitude of Ameritech OSS systems, Staff witness McClerren was asked on cross-examination whether he was aware of the fact that the Commission had engaged independent third-party auditors to investigate the reasonable costs incurred to build Commonwealth Edison Company's Byron I and II, and Braidwood I and II nuclear generating stations, as well as Illinois Power Company's Clinton I plant. Tr. 2600-02. While Mr. McClerren was aware of those proceedings he did not participate in them, and thus was unaware of the costs those companies

sought to place into rate base in those proceedings. Id.

Staff stipulated to the costs involved in those proceedings, and it is no stretch of the imagination to say that the costs involved were not only of great magnitude, they were mind-boggling. Edison attempted to rate base $2,318,000,000 and $1,884,250,796, respectively, for the design, construction and startup of Byron Units I and II, and $3,268,000,000 and $1,863,000,000 respectively, for Braidwood Units I and II. See Commonwealth Edison Company: Proposed General Increase in Electric Rates and Commonwealth Edison Company: Proposed General Increase in Electric Rates, Docket Nos. 83-0537, 84-0555, Consol., 1985 Ill. PUC LEXIS 4; 71 P.U.R.4th 81 (Ill. C.C. October 24, 1985); Commonwealth Edison Company: Proposed general increase in electric rates; Commonwealth Edison Company: Petition for authority to record carrying charges and deferred depreciation for Byron Units 1 and 2 and Braidwood Unit 1; Commonwealth Edison Company: Proposed general increase in electric rates; Staff of the Illinois Commerce Commission: Petition for an investigation of the rates of Commonwealth Edison Company and of an Offer of Settlement of Docket Nos. 87-0169, 87-0427, and 88-0189; Commonwealth Edison Company: Petition for authority to record carrying charges and deferred depreciation for Braidwood Unit 2, Docket Nos. 87-0427; 87-0169, Consol.; 88-0189; 88-0219; 88-0253, On Remand, Docket No 90-0169, 1991 Ill. PUC LEXIS 145 (Ill. C.C. March 8, 1991). Illinois Power, on the other hand, attempted to rate base $2,698,000,000 for the design, construction and startup of Clinton Unit I. See Illinois Power Company: Proposed general increase in electric rates and changes in terms, conditions, rules and regulations for electric and gas service, Docket No 84-0480, 1985 Ill. PUC LEXIS 32; 69 P.U.R.4th 15 (Ill. C.C. August 7, 1985)

All told, these companies attempted to rate base $11.5 billion dollars in plant costs for construction of those units. In those cases, the Commission did not hesitate to rely on the expertise and manpower third-party consultants could provide it in order to make it easier for the Commission to determine the reasonable cost of these plants. Because no meaningful distinction can be raised between the magnitude of the decisions made in the Edison and Illinois Power

decisions, and the decisions to be made regarding the operational readiness and commercial viability of Ameritech's OSS systems, the Commission should stay the course it established long ago and employ third-party consultants to test Ameritech's operations support systems.

b. Use of Third Party Consultants Does not Result in an Abrogation of the Commission's Responsibility or Authority

To refute Staff's contention that the Commission somehow abrogates its responsibility when it engages the help of outside consultants, one need only look to the Edison and Illinois Power decisions cited above. However, one can also look to the Commission and even the Staff's reliance on third-party consultants in other contexts to also refute the contention.

Staff witness McClerren testified on cross-examination that when he first joined the Commission Staff in 1987 he was employed in the Commission's Management Studies Division. Tr. 2596. The Management Studies Division was responsible for conducting management audits of utilities, whose purpose was to "improve the efficiency [of] the operations of the utilities, or at the very least ascertain that for the Commission." Tr. 2596.

Mr. McClerren acknowledged that he himself had been the project manager for two such audits, one of which involved Ameritech. Tr. 2597-98. Mr. McClerren also testified that in the conduct of such management audits, the Commission had found it helpful to hire outside consultants in at least two situations: (1) where limited Staff resources existed at the time; and (2) where the Staff could benefit from the expertise of outside consultants. Tr. 2597. Mr. McClerren also testified to the fact that the Commission in the past has required the Staff to place audit recommendations in the form of testimony, and has subjected that testimony to the contested case process, including cross-examination and briefing. Tr. 2598-99.

Mr. McClerren's testimony as well as the Edison and Illinois Power cases make clear that in the past this Commission has not hesitated to use outside consultants to help it make complicated determinations of fact. Moreover, this Commission's past use of the contested case process when needed to test the opinions of its outside consultants, ensures that in no way does

the Commission abrogate any decision making authority when it makes use of such consultants.

c. Retention of KPMG now Will Ensure That Third Party Testing Moves Expeditiously and Will Give the Commission More Than a "Snapshot" View of Ameritech's OSS Systems

During re-direct, Mr. McClerren opined that third-party testing is lengthy and would take place late in the process of developing Ameritech 's OSS systems. Tr. 2616-17. Mr. McClerren also testified that such third-party review would only give the Commission a snapshot view of Ameritech's OSS systems. Id.

As to Mr. McClerren's opinion that testing would occur later rather than sooner, Mr. McClerren admitted the assumption underlying this opinion was Joint Applicant's assertion that Ameritech's OSS systems will be developed within two years after the close of the merger. Tr. 2606-08. Mr. McClerren also admitted that the OSS systems would not all be turned up at once; rather, "the systems would be integrated as they went along." Tr. 2607.

Contrary to Staff's assertions, there is no indication that the third-party testing of Ameritech's OSS systems will be a lengthy process. Retention of KPMG now will ensure the Commission that it is retaining a third-party consultant with extensive OSS testing experience in other states. KPMG's OSS testing experience in other states means that the Commission will be retaining a consultant with a short learning curve. Moreover, there is no reason to believe that OSS deployment cannot occur more quickly than Joint Applicant's two year estimate. Finally, because Ameritech's systems will be deployed over time, there is simply no reasons to delay testing of those systems until all systems are deployed; rather, KPMG can begin to test the systems as those systems are put into place.

As to Mr. McClerren's assertion that third-party testing will only give the Commission a s "snapshot" view of Ameritech's OSS, Mr. McClerren appeared to be unaware of the fact that KPMG has been employing military style testing of Bell Atlantic's OSS systems. Tr. 2621. Military style testing or, "test until you pass" ensures that the Commission will not receive a "snapshot" view of Ameritech's OSS; rather, it will ensure the Commission as well as all CLECs

that Ameritech's OSS fully operational on a commercially viable basis.

In contrast to the testimony of the Joint Applicants and Staff, MCI WorldCom provided extensive testimony on the benefits of third party and carrier-to-carrier testing based on its experiences in New York and Texas. MCI WorldCom witness Lichtenberg explained in detail why the New York style third party test is superior to the OSS test being conducted in Texas. She detailed the parameters of a valid third party test described why third party testing, complemented by carrier-to-carrier testing, is so critical to CLECs who want to roll-out competitive services to residential and small business customers on a mass market basis.[14] While noting that the New York test is on-going, Ms. Lichtenberg noted that the availability of the OSS and its ability to support UNE platform, albeit with flaws that remain to be fixed, MCI WorldCom has been able to sell in excess of 100,000 residential access lines state-wide. That unrebutted evidence speaks volumes about what market opening initiatives have and have not been successful to date. Nothing in the record suggests that OSS testing or other market opening initiatives in Texas have been that successful.

Based on the record on reopening, the Commission's decision on third party testing should be easy. The Commission should reject the positions of the Joint Applicants and Staff. It should adopt in whole the position of MCI WorldCom and require New York style third party and carrier-to-carrier testing, and engage KPMG as the third party tester. The Commission should order the development, testing and implementation of OSS that will support UNE platform and combinations of UNEs to commence immediately.

Finally, the Commission should conclude and require that the cost of developing, implementing and conducting the third party testing of Ameritech's OSS be borne solely by the Joint Applicants. It is the Joint Applicants who stand to accrue the significant financial benefits of this merger. The ability to ensure that Ameritech Illinois' local exchange market is open to competition in a timely fashion is dependent in large part upon the development, implementation

[14] *Id.*, pp. 21-35.

and testing of appropriate and uniform OSS systems that will support mass market entry by CLECs to provide service to residential and small business customers. The costs of testing and validating the systems are critical to bringing benefits to Illinois customers, and which will benefit Ameritech Illinois' Section 271 efforts, is appropriately shouldered by the Joint Applicants and can be viewed as one of our requirements as to how merger savings should be allocated.

3. Pricing

Certainty regarding the pricing of combinations of UNEs, including the UNE platform, and stand alone UNEs is also critical the ability of CLECs to develop business plans to provide competitive local services to residential and small business customers on a mass market basis. MCI WorldCom witness Campion testified about problems with respect to lack of permanent pricing for non-recurring charges.[15] MCI WorldCom recommends with respect to non-recurring charges for all UNEs, permanent pricing for shared transport and pricing for network element combinations, those issues be resolved expeditiously in Phase 2 of the on-going Ameritech TELRIC proceeding. Until the proceeding is completed, the Commission should require Ameritech Illinois to reduce by 50% all stand alone non-recurring charges for individual UNEs that Ameritech had proposed in the original TELRIC until such time as permanent non-recurring charges can be established.

4. Performance Benchmarks and Enforcement Measures

There must be significant enforcement mechanisms to ensure that Joint Applicants do not backslide on their commitments, as well as meaningful performance benchmarks to ensure continued compliance with Commission-established terms, conditions and requirements for approval of the merger. It is clear from this record that the performance benchmarks and enforcement measures Joint Applicants have offered to this Commission differ from those at they have proposed at the FCC or those to which SBC agreed to implement in Texas.

At a minimum, the Commission should settle for no less than the performance benchmarks

[15]MCI WorldCom Ex. 4.0 (Campion Rebuttal on Reopening), pp. 15-18.

and enforcement measures SBC has agreed to before the Texas Commission. The Texas measures should provide a floor or starting point on which the Commission can build, not the ceiling to which it aspires. Moreover, to the extent the Commission considers the performance benchmarks and enforcement measures Joint Applicants have offered to the FCC, MCI WorldCom has proposed significant modifications to those benchmarks and measures in its comments to the FCC. The Commission should, at a minimum, adopt those modifications if it desires to use those benchmarks and measures here in Illinois. For the convenience of the Commission and the parties, MCI WorldCom's comments on the Joint Applicants proposed conditions to the FCC, which include MCI WorldCom's suggested modifications to the proposed FCC benchmarks and measures, are appended to this brief and designated as Attachment 1.

V. CONCLUSION

For all of the foregoing reasons, MCI WorldCom respectfully requests that the Commission enter an order in this proceeding consistent with the positions it has taken in its testimony, briefs, and comments to the FCC. In addition, to the extent that the Commission is inclined to enter an order conditionally approving the proposed merger, MCI WorldCom respectfully requests that the Commission adopt in toto the proposed language that MCI WorldCom is appended to this brief and designated as Attachment 2.

Respectfully submitted,

MCI WORLDCOM, Inc.

By: _____

Darrell S. Townsley
MCI WORLDCOM, Inc.
205 North Michigan Avenue, Suite 3700
Chicago, Illinois 60601
(312) 470-3395

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Its Attorney